

**Tuesday, December 14, 2004**

The Board met at its offices at 450 N Street, Sacramento, at 10:35 a.m., with Ms. Yee, Mr. Leonard, Mr. Parrish and Mr. Chiang present, Ms. Mandel present on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **ORGANIZATION OF THE BOARD**

Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Ms. Yee, Mr. Parrish, Mr. Leonard, Mr. Chiang and Ms. Mandel voting yes, the Board elected Mr. Chiang as Chair of the Board of Equalization.

Ms. Mandel moved to elect Mr. Leonard to be the Vice Chair of the Board of Equalization. Mr. Leonard declined the nomination.

Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board elected Mr. Parrish as Vice Chair of the State Board of Equalization.

### **CORPORATE FRANCHISE AND PERSONAL INCOME TAXES HEARINGS**

Richard and Lori Randall, 260104

1992, \$113,600.00 Assessment

For Appellant:

Broderick L. Jew, CPA

For Franchise Tax Board:

Jeanne Sibert, Attorney

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether respondent properly included income from appellants' disqualifying disposition of incentive stock option shares in the calculation of appellants' California taxable income.

Whether respondent abused its discretion in denying appellants' request for interest abatement.

Appellant's Exhibit: Letter (Exhibit 12.1)

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and duly carried, Mr. Chiang, Mr. Parrish and Mr. Leonard voting yes, Ms. Yee and Ms. Mandel voting no, the Board ordered that the appeal be submitted for decision, granting the appellant 30 days to submit supporting documents, then Appeals Division is to review the appellant's supporting documents and provide its recommendation to the Board.

Mr. Parrish moved to relive 18 months of interest. The motion was seconded by Mr. Leonard but failed to carried, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Ms. Mandel voting no.

Exhibits to these minutes are incorporated by reference.

Paul W. Van Etten and Peng N. Van Etten, 257679

1998, \$41,000.00 Assessment

For Appellant:

Paul W. Van Etten, Taxpayer

For Franchise Tax Board:

Michael Smalley, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Tuesday, December 14, 2004

Issues: Whether legal fees incurred in defense and counter suit of a contract dispute arising out of the reconstruction of a home owned and maintained as a rental property by appellants are expenses that must be capitalized.

Whether appellants have shown that a series of loans advanced to their daughter and son-in-law became worthless and eligible for a bad debt deduction in 1998.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**Stanley A. Posey and Cherine L. Ang, 251556**

2001, \$2,490.25 Claim for Refund

For Appellant: Stanley A. Posey, Taxpayer

For Franchise Tax Board: Suzanne Small, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellants have shown reasonable cause for relief from a notice and demand penalty.

Action: Upon motion of Mr. Leonard, seconded by Ms. Mandel and duly carried, Mr. Chiang, Mr. Parrish, Mr. Leonard and Ms. Mandel voting yes, Ms. Yee voting no, the Board reversed the action of the Franchise Tax Board.

**Rick Spain, 206124, 237220**

1999, \$3,974.00 Tax, \$1,987.00 Penalties

2000, \$4,141.00 Tax, \$2,070.50 Penalties

For Appellant: Rick Spain, Taxpayer

For Franchise Tax Board: Mark McEvilly, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether appellant has demonstrated error in respondent's proposed assessments.  
Whether a frivolous appeal penalty is appropriate.

Action: Upon motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board submitted the appeal for decision.

**SALES AND USE TAX APPEALS HEARINGS****Accubid Systems, Inc., 242469**

10-1-94 to 1-31-02, \$105,263.31 Tax

For Petitioner: Mark Feigenbaum, CPA

Michael Bazzi, Attorney

For Sales and Use Tax Department: Chris Schutz, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether application of the provisions of California Code of Regulations, Title 18, section (Regulation) 1507, subdivision (a)(1), which excludes sales of prewritten software from technology transfer agreements, can be avoided.

**Tuesday, December 14, 2004**

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

**La Mesa Blueprint, 157302**

1-1-98 to 12-31-00, \$40,254.59 Tax, \$00.00 Penalty

For Petitioner:

Glenn Bystrom, CPA

Mark Legg, Taxpayer

For Sales and Use Tax Department:

Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether taxpayer's method of calculating cash discounts results in the collection of excess tax reimbursement.

Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

The Board recessed at 12:00 p.m. and reconvened at 1:30 p.m. with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly present.

**ANNOUNCEMENT OF CLOSED SESSION**

The Board recessed at 1:31 p.m. and reconvened immediately in closed session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly present.

**CLOSED SESSION**

The Board met to discuss pending litigation (Govt. Code § 11126(e)), settlements (R&T Code § 6901, 7093.5, 30459.1 and 50156.11) and personnel matters (Govt. Code § 11126(a)).

The Board recessed at 2:05 p.m. and reconvened immediately in open session with Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly present.

Ramon Hirsig, Executive Director, announced the appointment of Charlene Yount to the position of Chief, Administrative Support Division, Administration Department.

**PROPERTY TAXES HEARINGS**

**High Desert Power Trust 2000-A (1127), 267687**

2004, \$489,000,000.00 Unitary Value

For Petitioner:

Dannie A. Tobias, Representative

For Property and Special Taxes Department:

Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the Board-adopted value should be based on the operating level of 760 megawatts (MW) rather than the rating level of 830 MW.

Tuesday, December 14, 2004

Whether the replacement cost per MW used by the staff to calculate the replacement cost new of the facility should be adjusted for site specific issues such as engineering, procurement and construction overruns, and external factors that impact value.

Whether the land should be valued as vacant land or for use as a power plant site.

Action: Upon motion of Mr. Chiang, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

**Pacific Bell Telephone Company (279), 268430**

2004, \$8,505,600,000.00 Unitary Value

For Petitioner:

Eric Miethke, Attorney

Carl Forbis, Representative

For Property and Special Taxes Department: Reed Schreiter, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the replacement cost new less depreciation value indicator relied upon by the Board in adopting petitioner's unitary value incorrectly estimated telephone pole removal costs.

Action: Upon motion of Mr. Parrish, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered that the 2004 unitary value be reduced to \$8,452,555,044.00.

**Covad Communications Company (7706), 269509**

2004, \$68,200,000.00 Unitary Value, \$6,820,000.00 Failure to File Penalty

For Petitioner:

Peter Hladek, Representative

Ernie Dronenburg, Representative

For Property and Special Taxes Department: Shirley Johnson, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the Board-adopted value correctly reflects impairment of petitioner's property due to asset write-downs and shorter useful lives.

Whether the 10 percent penalty imposed for failure to file a property statement should be abated.

Action: Mr. Parrish moved to abate the penalty, otherwise adopt the 2004 unitary value as recommended by staff. The motion was seconded by Mr. Leonard but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Mr. Westly voting no.

Upon motion of Mr. Chiang, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered that the petition be submitted for decision.

**PUBLIC COMMENT**

The following speaker made public comment on *Alpine PCS, Inc. (2746)*, 269687.

Speaker: Michael Neal Gendelman, Representative, Alpine PCS, Inc.

Tuesday, December 14, 2004

**PROPERTY TAXES HEARINGS**

Alpine PCS, Inc. (2746), 269687  
2004, \$13,400,000.00 Unitary Value

For Petitioner:

Waived Appearance

For Property and Special Taxes Department: Reed Schreiter, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether the Board-adopted unitary value should be reduced because it grossly overstates the actual value of the equipment.

Action: Mr. Leonard moved to grant the petition. The motion was seconded by Mr. Parrish but failed to carry, Mr. Parrish and Mr. Leonard voting yes, Mr. Chiang, Ms. Yee and Mr. Westly voting no.

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee and Mr. Westly voting yes, Mr. Parrish and Mr. Leonard abstaining, the Board adopted the revised staff recommendation to reduce the 2004 unitary value to \$6,700,000.00.

**PUBLIC COMMENT**

The following speakers made public comment on *Delta Energy Center, LLC* (1128), 270165, and, *Sutter Energy Center, aka Calpine Construction Finance*, (1132), 270168.

Speakers: Cameron Wolf, Jr., Partner, Orrick, Herrington, & Sutcliffe, LLP  
Ruthann Ziegler, City Attorney, City of Pittsburgh

**PROPERTY TAXES HEARINGS**

Delta Energy Center, LLC (1128), 270165

2004, \$509,700,000.00 Unitary Value

Sutter Energy Center, aka Calpine Construction Finance, (1132), 270168

2004, \$304,500,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the Replacement Cost New value for improvements is excessive.  
Whether Board staff should have calculated and placed reliance on a Capitalized Earning Ability value indicator.

Whether board staff should have calculated a comparable sales approach value indicator.

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board adopted staff's revised recommendation which reduced the 2004 unitary value for *Delta Energy Center, LLC* (1128), 270165, to \$392,500,000.00; and, *Sutter Energy Center, aka Calpine Construction Finance* (1132), 270168, to \$230,300,000.00.

Tuesday, December 14, 2004

Elk Hills Power, LLC (1126), 270180

2004, \$335,200,000.00 Unitary Value

For Petitioner: Appearance Waived

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether the State Board of Equalization has the jurisdiction to assess the petitioner's electrical generation facilities.

Whether the Board-adopted unitary value accurately reflects physical depreciation and price declines in power plant property.

Whether the value of emission reduction credits required for operation of an electricity generating facility is assessable.

Action: Upon motion of Mr. Chiang, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board ordered that the petition be denied as recommended by staff.

**FINAL ACTION ON PROPERTY TAXES HEARING HELD DECEMBER 14, 2004**

High Desert Power Trust 2000-A (1127), 267687

Final Action: Upon motion of Mr. Westly, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board adopted staff's revised recommendation which reduced the 2004 unitary value to \$488,900,000.00.

**PROPERTY TAXES HEARINGS**

Metcalf Energy Center LLC (1133), 270166

2004, \$173,400,000.00 Unitary Value

Otay Mesa Energy Center (1134), 270164

2004, \$132,900,000.00 Unitary Value

For Petitioner: Waived Appearance

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the Historical Cost is appropriate to value property with significant obsolescence.

Whether staff should use petitioner's replacement cost valuation approach.

Whether staff should have calculated a capitalized earning ability value indicator.

Whether staff should use a comparable sales valuation approach.

Action: Upon motion of Mr. Westly, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board adopted staff's revised recommendation which reduced the 2004 unitary value for *Metcalf Energy Center LLC (1133), 270166*, to \$114,900,000.00; and, *Otay Mesa Energy Center (1134), 270164*, to \$62,400,000.00.

Tuesday, December 14, 2004

Mirant Potrero, LLC (1108), 270432

2004, \$63,800,000.00 Unitary Value

Mirant Delta, LLC (1109), 270433

2004, \$292,600,000.00 Unitary Value

For Petitioner:

Appearance Waived

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issues: Whether Board staff correctly calculated future Reliability-Must-Run revenues in deriving its CEA value indicator.

Whether Board staff used the correct lot size for valuation of the main parcel.

Reduction for Reclassification of Emissions Reduction Credits.

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board adopted staff's revised recommendation which reduced the 2004 unitary value for *Mirant Potrero, LLC (1108), 270432*, to \$43,100,000.00; and *Mirant Delta, LLC (1109), 270433*, to \$236,200,000.00.

Pastoria Energy Center, LLC (1131), 270167

2004, \$432,500,000.00 Unitary Value

For Petitioner:

Waived Appearance

For Property and Special Taxes Department: Tim Treichelt, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: No disqualifying contributions were disclosed.

Issues: Whether the Historical Cost approach is an appropriate method to value.

Whether staff should use a replacement cost valuation approach.

Whether staff should have calculated a capitalized earning ability (CEA) value indicator.

Whether staff should have calculated a comparable sales value indicator.

Whether staff should have placed 50 percent reliance on the replacement cost new value indicator and 50 percent reliance on the CEA value indicator.

Action: (Motion expunged.)

Upon motion of Mr. Chiang and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board ordered that its previous motion adopting staff's revised recommendation be expunged.

**PUBLIC COMMENT**

The following speakers made public comment on *Delta Energy Center, LLC (1128), 270165*; *Sutter Energy Center, aka Calpine Construction Finance, (1132), 270168*; *Metcalf Energy Center LLC (1133), 270166*; *Otay Mesa Energy Center (1134), 270164*; and *Pastoria Energy Center, LLC (1131), 270167*:

Speakers:

C. Stephen Davis, Attorney, Rodi, Pollock, Pettker, Galbraith & Cahill,  
representing Calpine Corporation

Cliff Clement, Director Property Tax, Calpine Corporation

Tuesday, December 14, 2004

**PROPERTY TAXES HEARING**

Pastoria Energy Center, LLC (1131), 270167

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board adopted staff's revised recommendation which reduced the 2004 unitary value to \$228,200,000.00.

**FINAL ACTION ON PROPERTY TAXES HEARING HELD DECEMBER 14, 2004**

Covad Communications Company (7706), 269509

Final Action: Upon motion of Mr. Westly, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, Mr. Parrish absent, the Board ordered to reduce the failure to file penalty from 10 percent to 5 percent, otherwise adopted staff's revised recommendation which reduced the 2004 unitary value to \$39,500,000.00.

Mr. Parrish stated for the record that he would have voted with the majority on the petition of *Covad Communications Company (7706), 269509*.

**PROPERTY TAX MATTERS, ADJUDICATORY****Petitions for Reassessment of Unitary Value**

San Diego Gas &amp; Electric Company (141), 270216

2004, \$3,052,400,000.00 Unitary Value

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$3,025,000,000.00 as recommended by staff.

Southern California Gas Company (149), 270311

2004, \$2,712,600,000.00 Unitary Value

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$2,655,600,000.00 as recommended by staff.

Verizon California, Inc., (201), 270170

2004, \$3,373,300,000.00 Unitary Value

Presented for Separate Discussion

Contribution Disclosures pursuant to Government Code section 15626: No contribution disclosure forms were filed. The Members noted that their records disclosed no contributions from this taxpayer, his agent or participants.



**Tuesday, December 14, 2004**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$3,236,900,000.00 as recommended by staff.

**Citizens Telecommunications Company of California (284), 270169**

2004, \$182,700,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$173,900,000.00 as recommended by staff.

**All American Pipeline, L.P., (465), 268361**

2004, \$64,400,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$49,500,000.00 as recommended by staff.

**Duke Energy Moss Landing, (1103), 270191**

2004, \$762,000,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$754,000,000.00 as recommended by staff.

**Duke Energy Morro Bay, LLC, (1104), 270193**

2004, \$68,000,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$62,600,000.00 as recommended by staff.

**Cabrillo Power I, LLC, (1106), 270227**

2004, \$234,500,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$201,600,000.00 as recommended by staff.

Tuesday, December 14, 2004

**Cabrillo Power II, LLC, (1107), 270724**

2004, \$21,800,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$20,800,000.00 as recommended by staff.

**El Segundo Power LLC, (1110), 270302**

2004, \$142,800,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$126,200,000.00 as recommended by staff.

**Long Beach Generation, LLC, (1111), 270305**

2004, \$26,600,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$24,900,000.00 as recommended by staff.

**Allegiance Telecom of California, Inc. (7742), 269748**

2004, \$92,300,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$54,800,000.00 as recommended by staff.

**Looking Glass Networks, Inc., (7861), 269855**

2004, \$22,600,000.00 Unitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 unitary value be reduced to \$18,600,000.00 as recommended by staff.

**Petition for Reassessment of Private Railroad Car Tax****Cryo-Trans, Inc. (5946), 283813**

2004, \$3,584,981.00 Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

**Tuesday, December 14, 2004**

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board granted the petition for reassessment and reduced 2004 Private Railroad Car value to \$3,447,844.00 as recommended by staff.

### **Petition for Reassessment of Nonunitary Value**

Union Pacific Railroad Company (843), 283205

2004, \$502,953,690.00 Nonunitary Value

Considered by the Board: Hearing Request Withdrawn

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board ordered the 2004 nonunitary value be reduced to \$485,141,150.00 as recommended by staff.

### **PROPERTY TAX MATTERS NOT SUBJECT TO CONTRIBUTION DISCLOSURE STATUTE**

#### **Unitary Escaped Assessments**

New World Telecom International, Inc. (7967)

2004, \$359,000.00 Unitary Value, \$35,900.00 Late Filing Penalty

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board adopted the 2004 unitary value and late-filing penalty as recommended by staff.

Utility Telephone, Inc. (7994)

2003, \$41,000.00 Unitary Value, \$4,100.00 Late Filing Penalty

Action: Upon motion of Mr. Leonard, seconded by Mr. Westly and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Mr. Westly voting yes, the Board adopted the 2003 unitary value and a late filing penalty, plus statutory applicable interest, as recommended by staff.

Mr. Westly left the Boardroom and Ms. Mandel entered on behalf of Mr. Westly in accordance with Government Code section 7.9.

### **PUBLIC HEARING**

#### **Proposed Amendments to Property Tax Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding proposed amendments to Property Tax Rule 305.3, *Application for Equalization under Revenue and Taxation Code section 469*, to modify the definitions of property subject to escape assessment and the result of an audit (Exhibit 12.2).

Tuesday, December 14, 2004

Speakers: James Rees, Deputy County Counsel, County of Santa Clara

Action: (Motion expunged.)

### **SALES AND USE TAX APPEALS HEARING**

Advanced Component Labs, Inc., 221384

4-1-99 to 3-31-02, \$5,563.25 Tax

For Petitioner: Michael Oswald, Taxpayer

For Sales and Use Tax Department: Randy Ferris, Tax Counsel

Contribution Disclosures pursuant to Government Code section 15626: None were disclosed.

Issue: Whether petitioner's charges for non-recurring engineering are taxable as part of the sale of tangible personal property.

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be submitted for decision.

### **PUBLIC HEARINGS**

#### **Proposed Amendments to Property Tax Rule 305.3, Application for Equalization under Revenue and Taxation Code section 469**

Action: Upon motion of Mr. Chiang, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that its previous motion to adopt the proposed amendments to Property Tax Rule 305.3, *Application for Equalization under Revenue and Taxation Code section 469*, as published, be expunged.

Speakers: William Harris, Property Tax Manager, Intel Corporation  
John Despotakis, Tax Manager, Apple Computer Inc.  
Cris Andrews, President, California Assessors' Association

Action: Upon motion of Mr. Parrish, seconded by Ms. Mandel and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the proposed amendments to Property Tax Rule 305.3, *Application for Equalization under Revenue and Taxation Code section 469*, as published.

#### **Proposed Amendments to Property Tax Rule 1045, Annual Racehorse Tax**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding proposed amendments to Property Tax Rule 1045, *Annual Racehorse Tax*, to increase tax liability amount for mandatory audits, make technical changes and delete provisions unrelated to an assessor's functions (Exhibit 12.3).

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the proposed amendments to Property Tax Rule 1045, *Annual Racehorse Tax*, as published.

Tuesday, December 14, 2004

**Proposed Amendments to Rules of Practice Regulations 5041, 5073, 5076, 5082.2**

Kristine Cazadd, Assistant Chief Counsel, Property Taxes Division, Legal Department, made introductory remarks regarding proposed amendments to Rules of Practice Regulations 5041, 5073, 5076, 5082.2, to set forth more clearly the requirements for filing a valid petition for reassessment by state assessees and private railroad companies (Exhibit 12.4).

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the proposed amendments to Rules of Practice, Regulations 5041, 5073 and 5076, as published. The Board approved the revised language to Rule 5082.2 and referred the regulation to the 15-day file.

**Proposed Amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, General Provisions**

Jean Ogrod, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, made introductory remarks regarding proposed amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, *General Provisions*. Proposed changes to Appendix A reflect classification and organizational changes. Proposed changes to Appendix B add new programs administered by the Board (Exhibit 12.5).

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the proposed amendments to the State Board of Equalization's Conflict of Interest Code, Regulation 6001, *General Provisions*, with revised language and referred the regulation to the 15-day file.

**Timber Yield Tax Rate**

Dave Hayes, Manager, Research and Statistics Department, Legislative Division, made introductory remarks regarding the Timber Yield Tax Rate. The Revenue and Taxation Code requires that the Board adjust the timber yield tax rate in December of each year to the nearest one-tenth of one percent for the next calendar year. The adjustment is to be in the same proportion as the change from the previous tax year to the present one of the average general property tax rate in the rate adjustment counties (Exhibit 12.6).

Action: Upon motion of Ms. Mandel, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the 2005 Timber Yield Tax Rate of 2.9 percent as recommended by staff.

**Timber Harvest Values**

Mickie Stuckey, Chief, County Property Tax Division, Property and Special Taxes Department, made introductory remarks regarding the Timber Harvest Values. On or before December 31, the Board, after consultation with the Timber Advisory Committee and after

Tuesday, December 14, 2004

public hearings held pursuant to the Administrative Procedure Act, shall designate areas containing timber having similar growing, harvesting and marketing conditions to be used as timber value areas for the preparation and application of immediate harvest values (Revenue and Taxation Code section 38204) (Exhibit 12.7).

Speakers: Gerald Cochran, Del Norte County Assessor and a member of the Timber Advisory Committee

Action: Upon motion of Ms. Yee, seconded by Mr. Leonard and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the 2005 Timber Harvest Values as recommended by staff.

## **CHIEF COUNSEL MATTERS**

### **RULEMAKING—SALES AND USE TAX**

Janice Thurston, Assistant Chief Counsel, Business Taxes Division, Legal Department, made introductory remarks regarding the section 100 changes to Sales and Use Tax regulations.

#### **Request for authorization to amend Sales and Use Tax Regulation 1525.2, Manufacturing Equipment**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1525.2, *Manufacturing Equipment* (Exhibit 12.8).

#### **Request for authorization to amend Sales and Use Tax Regulation 1525.3, Manufacturing Equipment-Leases of Tangible Personal Property**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1525.3, *Manufacturing Equipment-Leases of Tangible Personal Property* (Exhibit 12.9).

#### **Request for authorization to amend Sales and Use Tax Regulation 1566, Automobile Dealers and Salesmen**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1566, *Automobile Dealers and Salesmen* (Exhibit 12.10).

Tuesday, December 14, 2004

**Request for authorization to amend Sales and Use Tax Regulation 1610, Vehicles, Vessels, and Aircraft**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1610, *Vehicles, Vessels, and Aircraft* (Exhibit 12.11).

**Request for authorization to amend Sales and Use Tax Regulation 1620, Interstate and Foreign Commerce**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1620, *Interstate and Foreign Commerce* (Exhibit 12.12).

**Request for authorization to amend Sales and Use Tax Regulation 1802, Place of Sales and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes**

Action: Upon motion of Ms. Mandel, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard, and Ms. Mandel voting yes, the Board adopted the Section 100 change to Sales and Use Tax Regulation 1802, *Place of Sales and Use for Purposes of Bradley Burns Uniform Local Sales and Use Taxes* (Exhibit 12.13).

**RULEMAKING—SPECIAL TAXES****Emergency Cigarette and Tobacco Products Tax Regulation 4056.1, Expiration of Heat-Applied Decal Tax Stamps**

Timothy Boyer, Chief Counsel, made introductory remarks regarding the adoption of emergency Cigarette and Tobacco Products Tax Regulation 4056.1, *Expiration of Heat-Applied Decal Tax Stamps* (Exhibit 12.14).

Speakers: John McLomas, Account Director, Standard Register Company  
Curt Semple, Business Development Manager  
Russell LaCoste, Vice President, SICPA Product Security

Action: Upon motion of Mr. Leonard, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board adopted the emergency Cigarette and Tobacco Products Tax Regulation 4056.1, *Expiration of Heat-Applied Decal Tax Stamps*.

Tuesday, December 14, 2004

**PROPERTY TAX MATTERS****Consideration of Findings and Decisions**

Duke Energy Oakland LLC (1105), 270197

2004, \$6,650,000.00 Unitary Value

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Findings and Decision as recommended by staff.

Duke Energy South Bay, LLC (1118), 270198

2004, \$72,800,000.00 Unitary Value

Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Findings and Decision as recommended by staff.

**ADMINISTRATIVE SESSION****ADMINISTRATIVE MATTERS, CONSENT**

With respect to the Administrative Matters, Consent Agenda, upon a single motion of Ms. Mandel, seconded by Mr. Parrish and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board made the following orders:

Action: Adopt the following resolutions extending its best wishes on their respective retirements and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.15).

Stephen E. Brown, Senior Specialist Property Appraiser, County Property Tax Division, Property and Special Taxes Department, Norwalk Office

Theresa (Terri) Call, Staff Services Analyst, Strategic Planning and Policy Development Section, Policy, Planning, and Evaluation Division, Administration Department, Headquarters

Myra L. Davis, Secretary, Culver City District Office

Michael Fontana, Supervising Tax Auditor II, New York Office

Charles W. Gentry, Supervising Tax Auditor I, Audit Determination and Refund Section, Headquarters

Remona A. Giordano, Business Taxes Compliance Specialist, Return Analysis Section, Headquarters

Kathleen P. Hodge, Secretary, Excise Taxes and Fees Division, Property and Special Taxes Department, Headquarters

Octavio Lee, Principal Property Appraiser, Valuation Division, Property and Special Taxes Department, Headquarters

Joseph J. Nanut, Associate Tax Auditor, Audit Determination and Refund Section, Headquarters



**Tuesday, December 14, 2004**

Lorna Perrigo, Secretary, Board Proceedings Division, Headquarters  
Pedro Salas, Associate Tax Auditor, San Francisco District Office  
Robert Solomon, Business Taxes Specialist, New York Office

Action: Adopt the following resolutions extending its best wishes and its appreciation for their service to the State Board of Equalization and the State of California (Exhibit 12.16).

Gay Carlson, Associate Governmental Program Analyst, Strategic Planing and Policy Development Section, Administrative Department  
Laura SooHoo, Associate Governmental Program Analyst, Administrative Support Unit, Property and Special Taxes Department

Action: Approve the Board Meeting Minutes of September 21-22, and October 19, 2004.

## **BOARD COMMITTEE REPORTS**

### **Legislative Committee**

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Legislative Committee report (Exhibit 12.17).

### **Customer Services and Administrative Efficiency Committee**

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Customer Services and Administrative Efficiency Committee report (Exhibit 12.18).

### **Business Taxes Committee**

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Business Taxes Committee report (Exhibit 12.19).

### **Property Tax Committee**

Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Property Tax Committee report (Exhibit 12.20).

## **OTHER ADMINISTRATIVE MATTERS**

### **Executive Director's Report**

Ramon Hirsig, Executive Director, reported on AB 986 Legislative Analysts' Office Report to the Legislature.

**Tuesday, December 14, 2004**

Mr. Leonard extended his thanks and appreciation to Dade Powers, Chief, Administrative Support Division, Administration Department, on his final presentation before the Board.

Mr. Leonard added an additional “thank you” to Mr. Hirsig for the report on AB 986 Legislative Analysts' Office Report to the Legislature.

Mr. Chiang extended his congratulation to Mr. Powers for his dedicated service to the State Board of Equalization and the State of California.

### **Special Presentation**

On behalf of the Board Members, Mr. Chiang presented to Timothy Boyer, Chief Counsel, a Board resolution extending its sincere and grateful appreciation for his dedicated service to the State Board of Equalization and the State of California.

Mr. Chiang extended his sincere and grateful appreciation to Mr. Boyer on his dedicated service to the State Board of Equalization.

Mr. Leonard extended his sincere and grateful appreciation to Mr. Boyer on his dedicated service to the State Board of Equalization.

Mr. Parrish extended his sincere and grateful appreciation to Mr. Boyer on his dedicated service to the State Board of Equalization.

Ms. Yee, on behalf of the former Chairwoman, her office, and herself, extended their sincere and grateful appreciation to Mr. Boyer on his dedicated service to the State Board of Equalization.

Ms. Mandel extended her sincere and grateful appreciation to Mr. Boyer on his dedicated service to the State Board of Equalization.

### **Offers-in-Compromise Recommendations**

Jean Ogrod, Assistant Chief Counsel, Settlement and Administration Division, Legal Department, made introductory remarks regarding the Offers in Compromise recommendations.

Action: Upon motion of Mr. Leonard, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board approved the Offers in Compromise of *Michael and Christina Upton*; *Steve B. Spangle*; and, *Munir S. Haddad*, as recommended by staff.

Tuesday, December 14, 2004

**FINAL ACTION ON CORPORATE FRANCHISE AND PERSONAL INCOME TAXES  
HEARINGS HELD DECEMBER 14, 2004**

Paul W. Van Etten and Peng N. Van Etten, 257679

Final Action: Upon motion of Ms. Yee, seconded by Mr. Chiang and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board.

Rick Spain, 206124, 237220

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board sustained the action of the Franchise Tax Board and imposed a \$1,000.00 frivolous appeal penalty.

**FINAL ACTION ON SALES AND USE TAX APPEALS HEARINGS HELD  
DECEMBER 14, 2004**

Accubid Systems, Inc., 242469

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

La Mesa Blueprint, 157302

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and duly carried, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, Mr. Chiang voting no, Mr. Parrish abstaining, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

Advanced Component Labs, Inc., 221384

Final Action: Upon motion of Ms. Mandel, seconded by Ms. Yee and unanimously carried, Mr. Chiang, Mr. Parrish, Ms. Yee, Mr. Leonard and Ms. Mandel voting yes, the Board ordered that the petition be redetermined as recommended by the Appeals Division.

The Board adjourned at 4:10 p.m.

*The foregoing minutes are adopted by the Board on March 22, 2005.*

Note: The following cases were removed from the calendar prior to the meeting: *Joseph and Sally Fernandez, 243530; Peoplesoft, Inc., 259799; and, Kathleen Lovell Lemons, 258455*

**Tuesday, December 14, 2004**